

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LEROY K. BERRA,

Plaintiff,

v.

MR. VELOSKI, SCDS Custody
Sergeant, MRS. HOSHKA, SCDS
Custody Officer, DENAY, Physician
Assistant, HATTON, Custody
Officer,

Defendants.

NO. 2:18-CV-0311-TOR

ORDER GRANTING DEFENDANTS
HATTON, HOSHKA, AND
VELOSKI'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants Hatton, Hoshka, and Veloski's Motion for Summary Judgment (ECF No. 47). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed.

Defendants' Motion was filed on April 6, 2020 and set for a hearing on May 26, 2020. ECF No. 47. Plaintiff was simultaneously provided the notice required

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1 by *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998 (en banc)). ECF No. 52. Under
2 this District's Local Rules, Plaintiff's response to the Motion was due on May 6,
3 2020. LCivR 7(c)(2)(A)(ii). On April 20, 2020, Plaintiff filed a Motion for
4 Extension of Time to File Response. ECF No. 54. The Court granted this Motion
5 and ordered Plaintiff to file his response by May 13, 2020. ECF No. 56. Plaintiff
6 failed to file any response.

7 Failure to comply with filing deadlines "may be deemed consent to the entry
8 of an order adverse to the party who violates these rules." LCivR 7(e). Because
9 Plaintiff's extended filing deadline and the hearing date on Defendants' Motion for
10 Summary Judgment have now passed and Plaintiff failed to file any opposition to
11 the Motion, the Court deems Plaintiff to have consented to entry of an Order
12 Granting Summary Judgment pursuant to LCivR 7(e).

13 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma
14 pauperis if the trial court certifies in writing that it is not taken in good faith." The
15 good faith standard is an objective one, and good faith is demonstrated when an
16 individual "seeks appellate review of any issue not frivolous." *See Coppedge v.*
17 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an
18 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,
19 490 U.S. 319, 325 (1989).

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendants Hatton, Hoshka, and Veloski's Motion for Summary
3 Judgment (ECF No. 47) is GRANTED.

4 2. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
5 this Order would not be taken in good faith and would lack any arguable
6 basis in law or fact.

7 The District Court Executive is directed to enter this Order, furnish copies to
8 the parties, and **terminate** Hatton, Hoshka, and Veloski as Defendants in this
9 matter.

10 **DATED** May 27, 2020.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge